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Supreme Court, U.S.
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NO. 90-757

In the Supreme Court of the United States

OCTOBER TERM, 1990

RONALD CHISOM, et al.,
Petitioners,

VERSUS

CHARLES E. ROEMER, et al.,
Respondents,

CERTIORARI TO THE UNITED STATES
COURT OF APPEAL FOR THE FIFTH CIRCUIT

ORIGINAL BRIEF SUBMITTED ON BEHALF OF AMICUS CURIAE, DARLEEN M. JACOBS, A PROFESSIONAL LAW CORPORATION SUPPORTING REVERSAL

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AMICUS BRIEF

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

NOW INTO COURT, through undersigned counsel, comes DARLEEN M. JACOBS (A PROFESSIONAL LAW CORPORATION), amicus curiae, who respectfully moves this Honorable Court for leave to file the present brief. The said brief, filed in support of petitioners, RONALD CHISOM, ET AL, requests a reversal of the decision rendered in this cause by the United States Court of Appeal for the Fifth Circuit.

Counsel for amicus curiae, a member of the bar of this Court, respectfully certifies that counsel for all parties heve granted their consent for amicus curiae to present

and file the present brief, and letters of Consent to Participate by all parties are under separate cover.

DARLEEN M. JACOBS

QUESTION PRESENTED

Does Section 2 of the Voting Rights Act, as amended, govern the the election of judicial officers?

PARTIES

The following parties were in the the courts below:

Ronald Chisom, Marie Bookman, Walter Willard, Marc Morial, Henry Dillon, III and the Louisiana Voter Registration/Education Crusade, Plaintiffs;

The United States of America, Plaintiff-Intevenor;

Charles E. Roemer, in his capacity as governor of the State of Louisiana, W. Fox McKeithen, in his capacity as Secretary of the State of Louisiana, and Jerry M. Fowler, in his capacity as Commissioner of Elections of the State of Louisiana, Defendants.

Pascal F. Calogero, Jr., and Walter F. Marcus, Jr., Defendants-Intervenors.

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STATEMENT REGARDING ORAL ARGUMENT

Amicus curiae, Darleen M. Jacobs, requests leave to appear at oral arguments.

STATEMENT REGARDING JURISDICTION

Amicus curiae respectfully adopts the jurisdiction contained in the original brief of the plaintiffs-appellants, Ronald Chisom, et al. Amicus further submits that jurisdiction in uncontested.

STATEMENT REGARDING AMICUS CURIAE

Amicus curiae herein is a New Orleans law corporation interested in promoting the election of a Supreme Court Justice in and for the City of New Orleans, and the Parish of Orleans.

STATUTE INVOLVED

This case involves Section 2 of the Voting Rights Act, as amended, 42 U.S.C. Section 1973, which provides pertinent part:

> "(A) No voting qualification or prerequisite to voting or standard practice or procedure shall be imposed or implied by a state of a political subdivision in the manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color; (B) A violation of subsection (A) at this section is established if, based on the totality of the circumstances, it is

> shown that the political process leading to the nomination or election in the state of political subdivision are not equally open to participation by members of the class citizens protected by subsection (A) of this section in that its members have less opportunity to participate in the process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the state or political subdivision is one circumstance which may be considered: provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

STATEMENT OF THE FACTS

The Louisiana Supreme Court is comprised of seven justices, five of which are elected from single-member districts. The two remaining

justices, who terms are staggered, are elected from a multi-member district made up of Orleans, Jefferson, St. Bernard and Plaquemines Parishes. This is known as the First Supreme Court District (hereinafter referred to as the "First District"). Only voters who reside in the First District elect the justices from this district. The candidate who receives the majority of the votes sits on the Supreme Court.

The First District is Louisiana's most populous election district and it contains the most black voters of all of the six Supreme Court Districts. The First District has a majority white population and registered voter majority. Orleans Parish has a black majority in regards

to both total population and registered voter population. Blacks constitute 53% of the registered voters in Orleans Parish, but only 32% of the registered voters in the First District. Race continues to play an important role in judicial elections in Louisiana and the First District. Highly qualified black judicial candidates are unable to successfully seek election for a contested position in Jefferson, St. Bernard and Plaquemines Parishes because the white electorate will not vote for black candidates. Even though blacks do elect their preferred candidates in Orleans Parish-only elections, blacks represent only a minority of elected officials.

Amicus submits that the plaintiffs were successful in establishing the existence of the three elements enumerated by this court in Thornburg vs. Gingles, 478 U.S. 30 (1986). Blacks residing in Orleans Parish make up a group that is sufficiently large and geographically compact to constitute a majority in a single-member district. An Orleans Parish-only district would still be larger than the population size of the Fourth Supreme Court District. A district comprised of Jefferson, St. Bernard and Plaquemines Parishes would be almost equal in size. A new configuration represented by two single-member districts under the aforementioned plan would put to rest the denial and abridgement of the

right to vote of the affected black citizens, who are the voting majority in Orleans Parish. Since black candidates receive a majority of voter support from the black electorate, blacks will have the opportunity to elect their preferred candidate under a revised plan.

The plaintiffs also demonstrate that the white majority vote in the First District acts as a block to defeat the black population's preferred candidate. It was established at trial that the black candidate is the candidate of choice among black voters when black candidates oppose white candidates. White voters on the other hand, do not support black candidate. In the First District no black candidate has ever

been elected in a contested election to parish-wide office in Jefferson, St. Bernard and Plaquemines Parishes. The uncontested testimony at trial clearly shows that white voters will not vote for black judicial candidates. Only within Orleans Parish can a black win election, only because there are sufficient numbers of black voters to overcome white bloc voting.

Factors addressed by the Senate Report for the amendment to Section 2 of the Voting Rights Act are present in this case:

1) Louisiana has a past history of official discrimination cases, which is present today.

2) Racial polorization in the First District voting was clearly established at trial.

3) The opportunity for discrimination against blacks is enhanced because the majority of voting population is white, coupled with a majority vote requirement and staggered terms, effectively eliminates black judicial candidates from seeking elections to the Louisiana Supreme Court.

4) For blacks who live in Louisiana, the disparities in the educational, employment and living conditions effect their ability to participate in the political process.

5) Race plays an important role in the First District judicial elections; white voters will not vote for black candidates.

6) Blacks have enjoyed no success in seeking election for judicial offices in Jefferson, St. Bernard and Plaquemines Parishes. Since the combation white electorate in these parishes constitute a white majority, a black judicial candidate can not expect success in a four-parish election.

The District Court's finding, affirmed by the Fifth Circuit Court of Appeal, concluding that an Orleans-only Supreme Court District was not acceptable and that plaintiffs failed to satisfy all of the Gingles elements is incorrect.

STATEMENT OF THE CASE

COURSE OF PRIOR PROCEEDINGS

Amicus Curiae respectfully adopts the Statement of the Case and descriptions of the prior proceedings contained in the original brief of the plaintiffs-appellants, Ronald Chisom, et al.

ARGUMENT

The Election of Justices for the First District and Its Discrimatory Effect

This case presents an important issue of the meaning of the Voting Rights Act.

Amicus curiae respectfully submits this brief for the sole purpose of suggesting to this Court that the extreme importance of this case effects the makeup of the Louisiana Supreme Court and warrants this appeal. This is a voter discrimination case, brought pursuant to the Voting Rights Act (42 U.S.C. 1973), and the Civil Rights Act (42 U.S.C. 1983), to secure the rights guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution. At present, the

multi-parish multi-member district in the First District are unable to elect the candidate of their choice to serve on the Louisiana Supreme Court. The ramifications of this case are such as to impact greatly on the exercise of important voting rights.

This case arises out of a challenge by the plaintiffs, who are voters, attorneys, and voter registration and election organizations, to the multi-member aspect of the scheme by which Louisiana Supreme Court Justices are elected. Plaintiffs contend, and amicus agrees, that the multi-member scheme denies black registered voters an equal opportunity to participate in the political process as it relates to the election of the Supreme Court

Justices because the one, in this instance, of the multi-member scheme dilutes minority voting strength. Louisiana consists of six districts from which members of the Supreme Court are elected. All of these districts, with the exception of the district which is comprised of Orleans, Jefferson, Plaquemines, and St. Bernard Parishes, are designed as to elect a single Supreme Court Justice. The First District elects two Justices, whose terms are staggered. It is the largest Supreme Court District which spans Orleans, Jefferson, Plaquemines and St. Bernard Parishes; and it has the largest black population. More than eighty (80%) percent of the black First District registered voters reside within

Orleans Parish. However, a substantial white majority results in the First District because the four parishes are meshed into one district, from which the entire population elects the two Supreme Court Justices. Amicus suggests that the First District could be split into two Supreme Court Districts, which would be made up of one district covering Orleans Parish and other district comprising of Jefferson, Plaquemines and St. Bernard Parishes.

No black had the opportunity to be elected to the Louisiana Supreme Court from any Supreme Court District in Louisiana in modern times. One Black was appointed to a vacancy on the Court for a period of less than three (3) weeks. But he was not

permitted under the Louisiana Constitution to seek election for which he had be appointed.

Racial Polorization and Its Effect on First District Elections

Historically speaking, Louisiana's judicial elections are racially polarized. Under the composition of the First District, it is not possible for a black to successfully seek a seat on the Supreme Court. The four parish scheme simply creates a white majority who overwhelmingly support white candidates in judicial elections.

The Gingles Factors

Amicus submits that all the elements enunciated by this court in the case of Thornburg vs. Gingles, 478

U.S. 30 (1986) are present. These factors are set out below:

1) The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district.

2) The minority group must be able to show that it is politically cohesive . . .

3) The minority group must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it, in the absence special circumstances such as a minority candidate running unopposed, . . . usually to defeat the minority's preferred candidate.

In the present case the black minority group is sufficiently large and geographically compact to constitute a majority in a single member district. Blacks comprise more than 50% of the population in Orleans Parish. Within this multi-member

First District, there are concentrations of black citizens that are sufficiently large and contiguous to compromise a voting majority in a single-member district lying wholly within the boundary of the multi-member First District; the present scheme results in a dilution of black votes because the black population is submerged in a white majority.

At trial the facts proved conclusively that the First District black population is politically cohesive. The statistical evidence presented, as well as the testimony of black candidates who stated that they received the majority of electorial support from black voters bore this fact out. Amicus submits that black

support for black candidates in Orleans Parish averages 80%; in Jefferson Parish black support for black candidates averages 90%. A high percentage of black voters regularly support black candidates. The blacks voter in Orleans Parish is is an excellent example of a politically cohesive group.

The black minority group demonstrated that the white majority votes sufficiently as a bloc results to defeat of the minority's preferred candidate. At trial, it was established that the black candidate was the candidate of choice by the black voters when a black candidate opposed the white candidate in any race. White voters, however, always fail to cast a majority of their votes

for any black candidate who opposes a white candidate.

It was clear at trial that white voters will not vote for black judicial candidates, regardless of their qualifications. It was found that only within Orleans Parish where black voters represent the voting majority are the black voters able to overcome the white bloc to elect a candidate of their choice. While blacks serve as judges in Orleans Parish, no black candidate has been elected in a contested election to a parish-wide office in Jefferson, St. Bernard or Plaquemines Parishes. It is impossible for a black candidate in the First District to successfully seek election to the Louisiana Supreme Court.

The History of Past Discrimination in Louisiana

Louisiana has a long history of official discrimination bearing upon the right to vote. This circumstance was acknowledged by the trial court. This history of discrimination has been the subject of continual litigation. The evidence at trial clearly displayed that this illegal voting discrimination in Louisiana goes on, even at present. Major vs. Treen, 574 F. Supp. 325 (E.D. La. 1983); East Jefferson Collision for Leadership and Development vs. Jefferson Parish, 691 F. Supp. 991 (E.D. La. 1988); and Citizens for a Better Gretna vs. City of Gretna, 834 F. 2d 496, 499 (5th Cir. 1987), cert. den. 106 L. Ed 2d 564 (1989). The

history against blacks in Louisiana is further evidenced by the fact that black students were not permitted to attend law schools in Louisiana until recent years a very large percentage of the State's black law student population attends the law school at Southern University, whereas most ofthe white public law students attend Louisiana State University, an academically superior institution. In regards to this point, the lower court had concluded that "the relatively lower economic status of black residents further affects accessibility to better education and such praticalities as campaign funding". As compared with whites, one-half fewer black persons in the First District have a high school education

and these blacks have one-half the per capita income of white. Additionally, there are five times as many black families living below the poverty level. The disparity is evident. The court in United States vs. State of Louisiana, 692 F. Supp. 642 (E.D. La. 1988) found that Louisiana higher public education still operates as a dual system.

Section Two of the Voting Rights Act Includes Judicial Elections

Nothing in the Voting Rights Act indicates that Congress intended to exclude the judiciary from the word "representatives" in Section Two of the Act. It is clear that the use of a multi-member electorate structure operates to minimize blacks preferred

candidates. In Louisiana, blacks do not have full access to the political process as it relates to the election of judicial candidates in the First District. At present, black voters in the First District have the opportunity to choose only among candidates offered by the white community. It is clear that the Voting Rights Act contemplates providing the black population with an equal opportunity to vote for judicial candidates of their choice. The defendants presented no evidence at trial that races where white candidates opposed each other offered black voters a choice of a "viable minority candidate".

In the present case, the use of larger multi-member First District is the direct cause of the dilution of black voting strength. Amicus submits that if the First District is divided into two smaller districts, blacks will have the ability to elect a black candidate. This scenario is simply not possible under the present system because blacks do not have the potential to elect their candidates within the present larger predominately white district.

The Decision of the Fifth Circuit Conflicts with the Sixth Circuit's Decision in Mallory vs. Eyrich

The Mallory vs. Eyrich, 839 F. 2d 275 (6th Cir. 1988) case involved the challenge of the election of the Ohio Municipal Court Judges. Here

the Sixth Circuit concluded that the Section 2 applied to the election of Judges.

The Mallory court scrutinized the language of the original Section Two of the Voting Rights Act in relation to the word "representatives" and found that no exceptions were expressed or implied. The Voting Rights Act of 1965 included a blanket prohibition against race-based discrimination in voting. The act defined "vote" or "voting" as including "all actions necessary to make a vote effective in any primary, special or general election, ... with respect to candidates for public or a party office ...". Congress did not change Section 14 (B) or the operative

provisions of this statute that define the scope of the Voting Rights Act when the language was added. Additionally, the court concluded that the 1965 act defined the term "vote" and "voting" very broadly and that judicial candidates are "unquestionably candidates for public . . . office".

In its decision, the Mallory court rejected the reasoning relied upon by the Fifth Circuit. In two respects, Mallory concluded that there is "no basis in the language or Legislative history of the 1982 amendment to support the holding" that when it used the word "representative" in the 1982 amendment, Congress removed Judicial Elections from the protective measures of the Act. There

is no reason to conclude that Congress intentionally created such an exception. The Mallory opinion makes it clear that the 1982 amendment to the Voting Rights Act did not "diminish the reach or effect of the original Section Two in any way". Amicus agrees that the word "representatives" should not be restrictivly interpreted and that the lower courts were in error for doing so. If it was seeking to limit the application of the Voting Rights Act to legislative races, Congress could have chosen the word "legislators", instead of "representatives". At present, there is absolutely no evidence that Congress intended to remove judicial elections from the

protection of the Voting Rights Act as it appears that the Act applies to all voting without any limitation.

CONCLUSION

The districting scheme presently in place in the First Distirct has the effect of unconstitutionally diluting the black vote in the parishes of Orleans, Jefferson, St. Bernard and Plaquemines. It is clear that voting in the First District is racially polorized, which effectively precludes a black candidate for the Louisiana Supreme Court to successfully seek a position as justice on the High Court. Amicus asserts that plaintiffs were overwhelmingly successful in showing existence of the Gingles factors, and as such that the current

districting arrangement is discriminatory within the provisions of Section Two of the Voting Rights Act. As a group, white voters simply will not vote for black judicial candidates in the First Supreme Court District. For the foregoing reasons, the decision of the Fifth Circuit should be reversed and the case should be remanded for a decision on the merits of the petitioners claims under Section Two of the Voting Rights Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of February 1991 served a copy of the foregoing on the counsel of record via the United States Postal Service, properly addressed, and postage prepaid.

DARLEEN M. JACOBS